

20 | **ON TRACK**
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Federal Programs Institute

SEPTEMBER 10-12 • Chattanooga Convention Center





Section 504 Requirements & Responsibilities

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Agenda

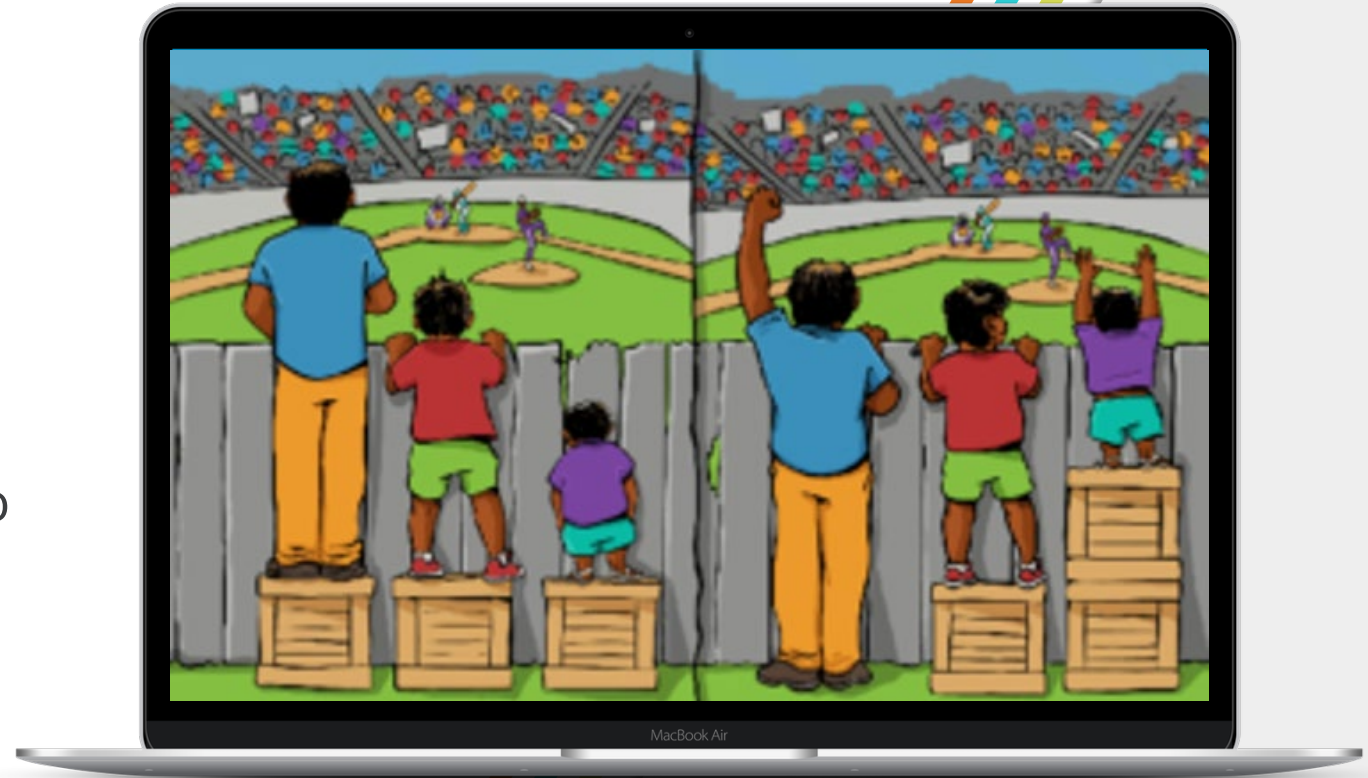
- Requirements of Section 504
- Comparison with Individuals with Disabilities Education Act
- District Obligations
- Evaluations and Reevaluations
- Other Considerations

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What is Section 504?

- Part of the **Rehabilitation Act of 1973** that prohibits discrimination based upon disability.
- The Individuals with Disabilities Education Act (IDEA) provides special education to students with disabilities and **Section 504 prohibits discrimination and “levels the playing field” for students.**
- Remember that the civil rights protections of Section 504 also apply to students with Individual Education Programs (IEPs).



Federal Civil Rights Statutes

- **Title VI of the Civil Rights Act of 1964**
 - Race, color, national origin
- **Title IX of the Education Amendments of 1972**
 - Sex
- **Section 504 of the Rehabilitation Act of 1973**
 - Disability



Students are protected from...

- **Discrimination** – Conduct that deprives a student of the benefit of an educational opportunity on the basis of a protected class (race, color, national origin, sex, or disability)
- **Harassment** – Behavior directed at a student based on a protected characteristic that interferes with their academic performance or participation in a school’s programs or activities and creates a learning environment that a reasonable person would find threatening, intimidating, or hostile
 - Note: separate definition for “sexual harassment”
- **Retaliation** – Adverse action against an individual for filing a complaint or participating in an investigation



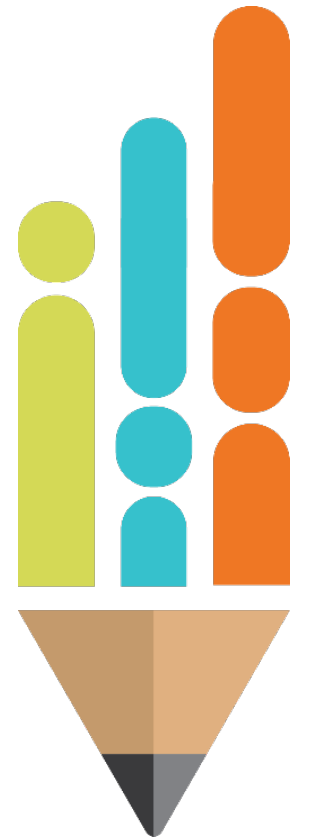
Who must comply with Section 504?

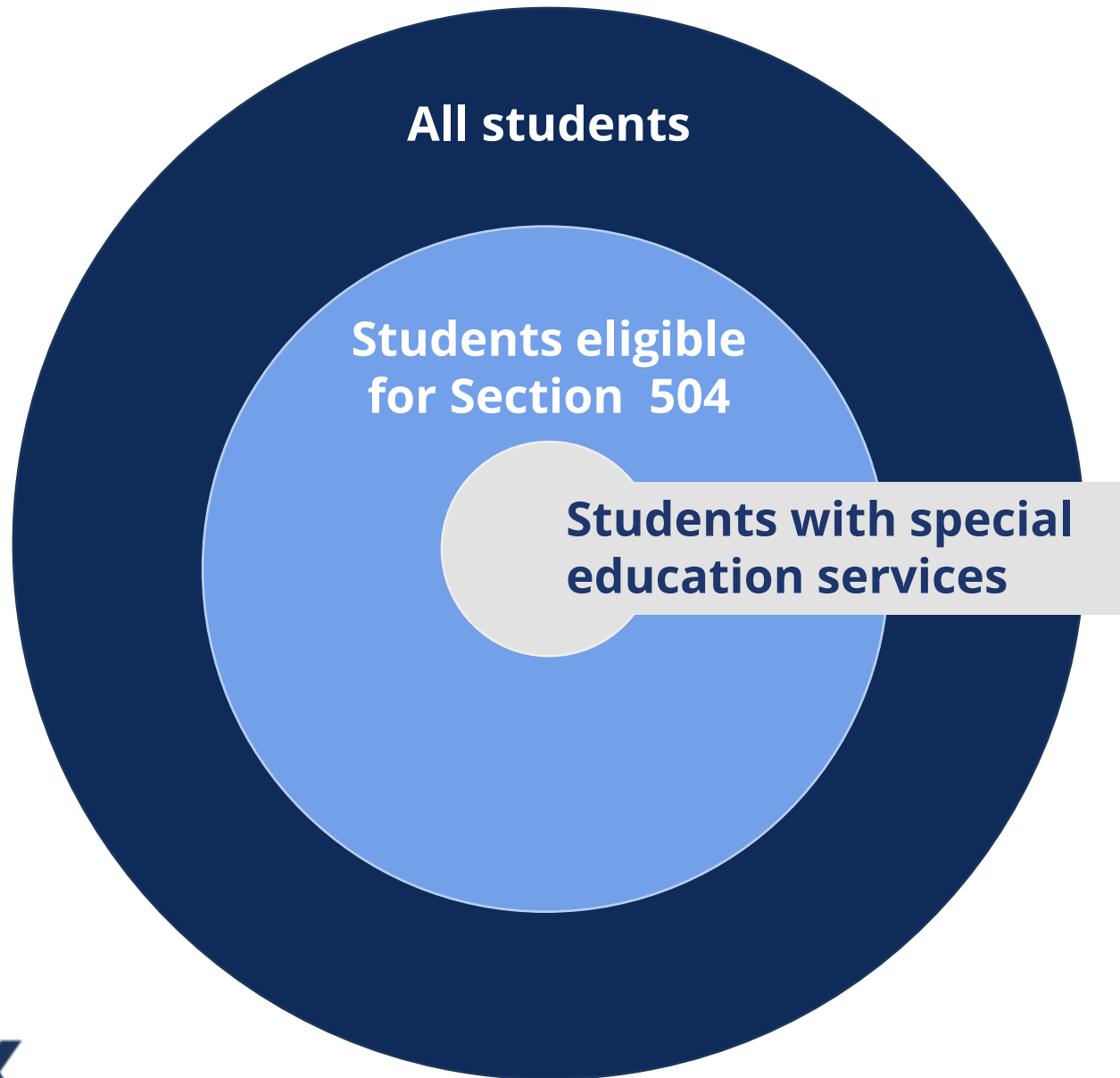
- Section 504 prohibits discrimination on the basis of disability by schools that receive federal financial assistance.
- All public schools and the state department of education must comply with Section 504.

34 C.F.R. § 104.4

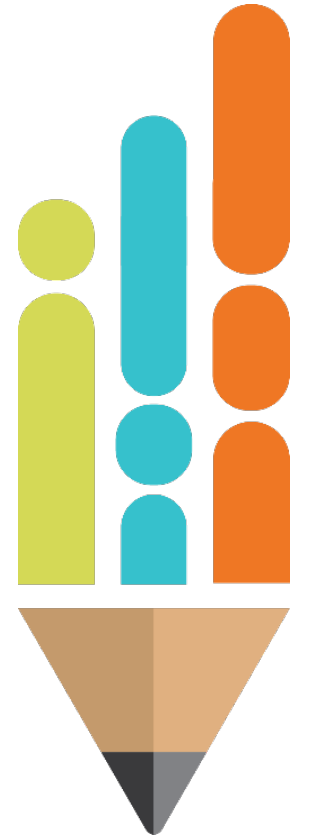
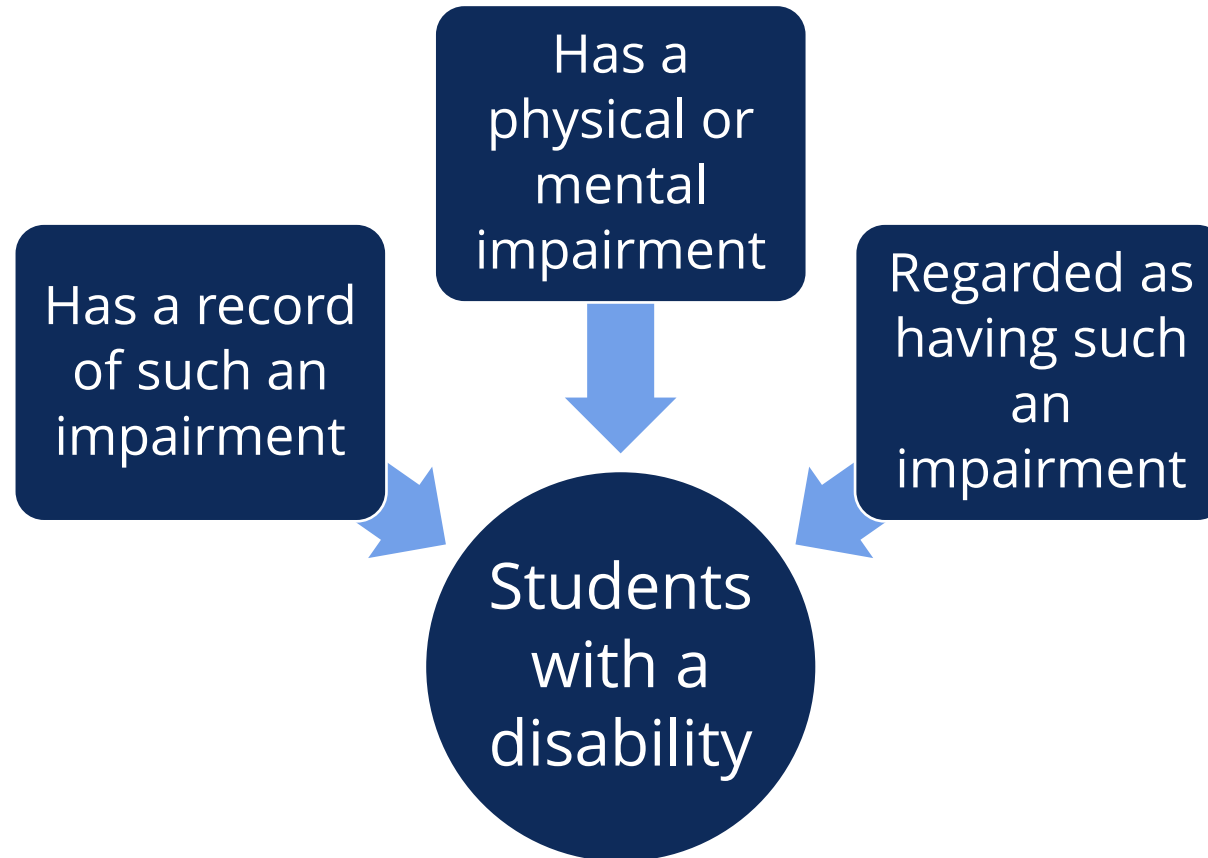
Individuals with Disabilities Education Act (IDEA) vs. Section 504

- IDEA **requires** a student to have a qualifying disability listed in IDEA or in the State Board of Education Rules and thereby need special education and related services. IDEA is an entitlement law designed to serve a specific population.
- Section 504 protects a qualified student with a disability **regardless** of whether the student needs special education





Who Is Covered By Section 504?



34 C.F.R. § 104.3(j)(2)

Who gets a 504 plan?

- A student with a physical or mental **impairment** that **substantially** limits one or more major life activity.
- Determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on a **case-by-case basis**.
- Remember, most (if not all) students with IEPs will meet this criteria and are therefore protected by Section 504.





You be the Judge!

- A fifth-grade teacher brings you (the 504 coordinator) a note from a parent requesting a 504 evaluation.
- The teacher says she forgot about the note that the parent sent in 3 days ago.
- How do you handle this?



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Differences with IDEA

Compare with IDEA



	Section 504	IDEA
General purpose	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities which receive federal financial assistance from the U.S. Department of Education.	A federally funded statute which provides financial aid to states in their efforts to ensure appropriate instruction and services for students with disabilities.
Qualifying disabilities	A physical or mental impairment that substantially limits one or more major life activities.	Fourteen disability categories under federal law and two disability categories under state law.



Compare with IDEA

	Section 504	IDEA
Free Appropriate Public Education (FAPE)	“Appropriate” means an education comparable to the education provided to nondisabled students.	“Appropriate” means a program reasonably calculated to provide an appropriate educational benefit based on the child’s unique circumstances.
Eligibility for services	A student is eligible if s/he has or has had a physical or mental impairment, which substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education.	A student is only eligible to receive IDEA services if the IEP team determines that the child has a disability (as defined by 34 C.F.R. § 300.8(c)) and needs special education and related services.



Compare with IDEA

	Section 504	IDEA
Accessibility	There are detailed regulations regarding building and program accessibility and comparable facilities. This includes academic settings.	They are not specifically mentioned, although if modifications must be made to provide FAPE, IDEA requires it.
Reevaluations	Periodic reevaluations are required. Reevaluation is required before a significant change in placement.	Reevaluations must be conducted at least every three years and are not required before a change in placement.



Compare with IDEA

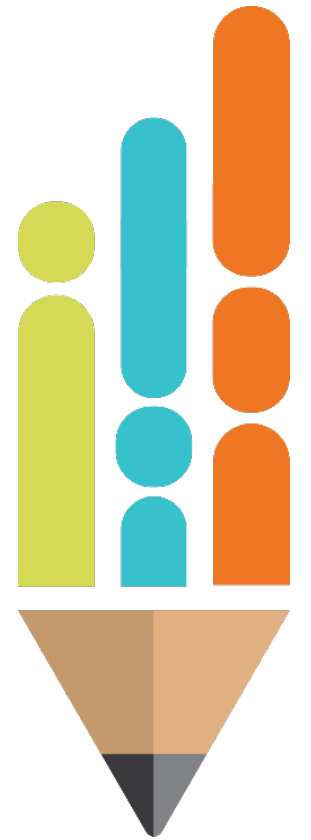
	Section 504	IDEA
Transition services	Not required.	Required.
Independent educational evaluation (IEE)	Not required.	Required.
Parental involvement in decision-making	Encouraged member of 504 team.	Required member of IEP team when students are under 18-years-old.

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Why would a student need a 504 plan rather than an IEP?

- A student needs an IEP if they require special education, defined as “specially designed instruction.”
 - Specially designed instruction is defined by IDEA as “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction (i) to address the unique needs of the child that result from the child’s disability; and (ii) ensure access of the child to the general curriculum...”
- A student needs a 504 plan if they do **not** require specially designed instruction, but instead need some supports, services, or accommodations in order to access general education.



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District Obligations

District Obligations to Students Covered By Section 504

- Implement 504 policy
- Procedural safeguards & Provide grievance process
- Bullying & Harassment
- Accessibility, Athletics, & Extracurricular Activities
- Find and notify (child find)
- Refer and evaluate
- Provide FAPE
- Least Restrictive Environment (LRE)



Implement a Policy

- LEAs must implement nondiscrimination policies and provide notice of these policies
- **Example District Policy** – Policy 1.802 Section 504 and Americans with Disabilities Act (ADA) Grievance Procedures
 - “The Board is committed to maintaining equitable employment/educational practices, services, programs and activities that are accessible and usable by qualified individuals with disabilities.”

34 C.F.R. § 104.8



Due Process Procedures

- LEAs **must** establish due process procedures that allow parents to challenge any decisions regarding the identification, evaluation, or educational placement of his or her child.



34 C.F.R. § 104.36

Procedural Safeguards

- School districts must provide a system of procedural safeguards regarding identification, evaluation, and educational placement.
- Procedural safeguards **must** include:
 - notice;
 - records review for parents or guardians;
 - impartial due process hearing with participation by parent and counsel; and
 - a review procedure.

34 C.F.R. § 104.36



Grievance Process

- LEAs are **required** to establish grievance procedures for resolving complaints under Section 504.
- Grievance procedure should include reasonable time frames, an opportunity to present evidence, notification of findings, and an appeals process.
- Grievance procedures **must** ensure that complaints are resolved in a prompt and equitable manner.

34 C.F.R. § 104.7



Bullying and Harassment

- Section 504 prohibits disability-based harassment (bullying a student **because of** their disability)
 - Abusive jokes, crude name-calling, threats, physical assault, etc.
- Applies to visible and non-visible disabilities
- When a child who receives special education or related services is harassed **on any basis** (e.g., weight, appearance, socio-economic status, etc.), **a school's failure to remedy may constitute a denial of free and appropriate education (FAPE)**



Retaliation Claims

- The Section 504 regulations incorporate the anti-retaliation provision of Title VI of the Civil Rights Act
 - 34 C.F.R. § 104.61, 34 C.F.R. § 100.7
- Section 504 also prohibits retaliation for assisting in securing compliance with the law.
 - 29 C.F.R. § 33.13



Equal Access

- LEAs must provide equal opportunities of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.

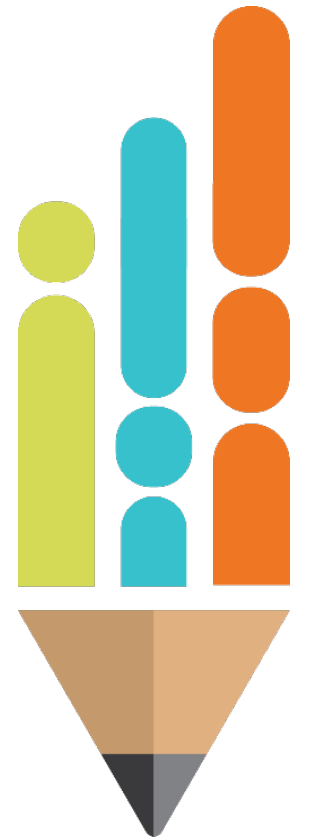


34 C.F.R. § 104.37

Accessibility & Comparable Facilities

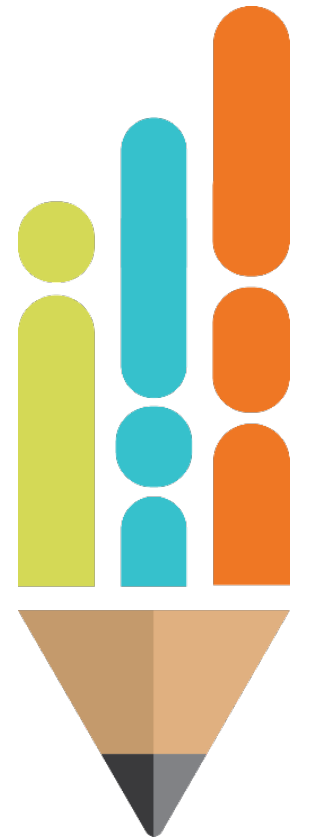
- LEAs are required to ensure that students and others with disabilities, including parents, are not denied access to programs or activities because of inaccessible facilities.
 - This includes academic buildings, walkways, restrooms, athletic facilities, and parking spaces.
- Requirements to ensure accessibility depend on the date a building was initially built or altered.
- Any district facility for persons with disabilities must be comparable to the other facilities, services, and activities of the district.

34 C.F.R. § 104.22 & 34 C.F.R. § 104.23



Extracurricular and Other Non-Academics

- Students with disabilities **must** be provided an equal opportunity to participate in transportation, lunch, recess, physical education, clubs, athletics, etc.
- Such activities **may** be part of the 504 plan.



34 C.F.R. § 104.7



Find and Notify

- **Every** year, each district **must**:
- identify students with disabilities in the district; and,
- notify parents/guardians of students with disabilities of their duties under Section 504.

34 C.F.R. § 104.32

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Parental Consent

Initial
Evaluation

Prior to Initial
Provision of Services

Evaluations

- The evaluation is intended to answer the following questions:
- Does the student have a disability under Section 504?
- What are the student's individual educational needs?
- Does the disability substantially limit a major life activity?



Evaluations

- Assessments (determined as needed by the team) **must:**
 - include a variety of sources of information;
 - be tailored to evaluate the specific areas of educational need; and
 - be validated for the specific purpose for which they are used and appropriately administered by trained personnel.
- Results/information obtained must be documented.
- All significant factors related to the student's learning process must be considered.
- Team members must determine if they have enough information to make a knowledgeable decision as to whether the student has a disability.



What are the student's individual educational needs?

Consider multiple pieces of assessment data.

Align assessment data to what major life activities are impacted.

There are no restrictions on what types of assessment can be administered.

Purpose of the Evaluation

- To help determine whether a child is a qualified student with a disability under Section 504.
- Section 504 requires the use of evaluation procedures that ensure that children are not:
 - misclassified,
 - unnecessarily labeled as having a disability,
or
 - incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.



You be the Judge

- Mr. Williams is very concerned. In September, two weeks after the new school year began, his 16-year-old son told him that he was having a hard time hearing his teacher and, as a result, he is unable to take detailed notes during class lectures.
- The school promised to evaluate the student, and Mr. Williams consented to the evaluation before the end of September. However, it is now December, and, to date, the evaluation has not started, never mind finished.
- Should the school have completed the evaluation before December?

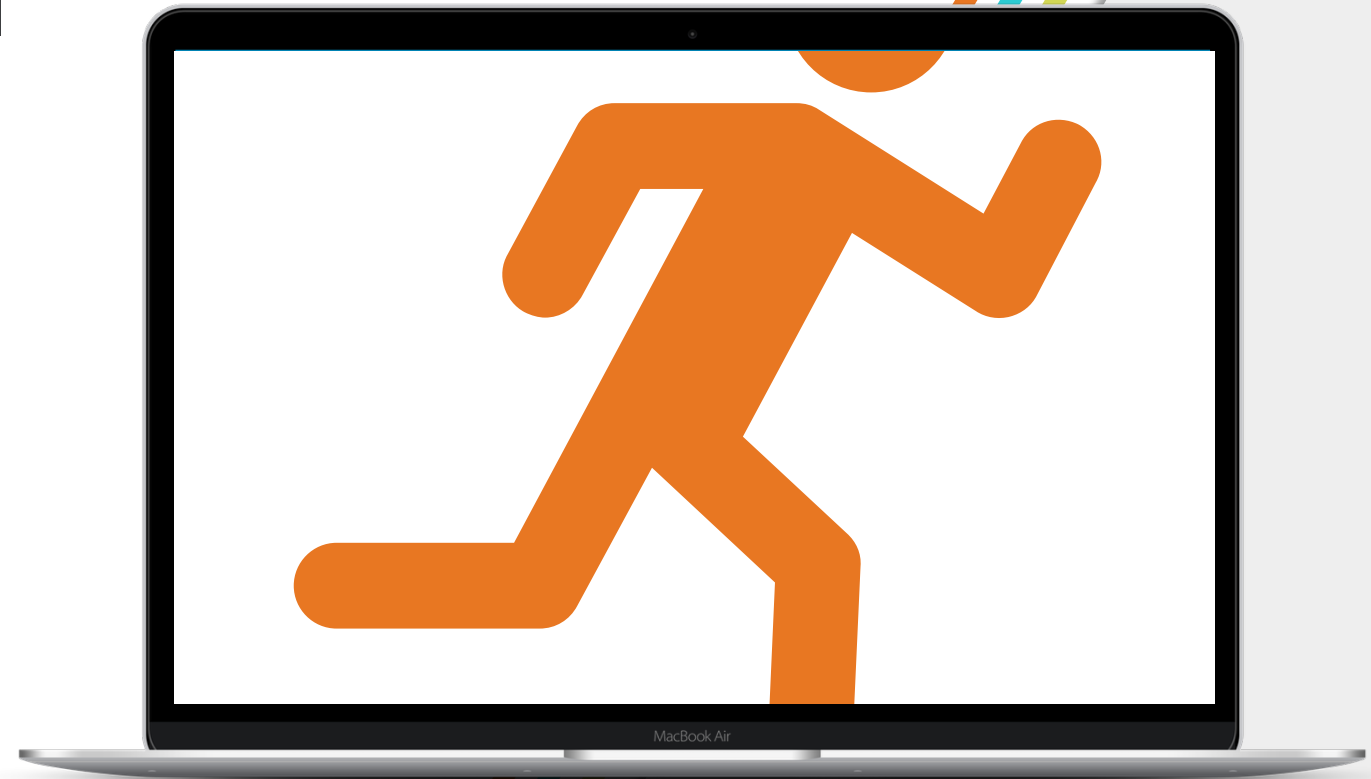


Evaluation & Eligibility Determination Team

- Composed of:
 - Section 504 Coordinator,
 - Principal or LEA, and
 - Professionals knowledgeable about the student, as needed.
 - Highly encouraged to include parents*
- *The review committee meeting may proceed when the parents are not present, but every effort should be made and documented by the coordinator to have parents attend the meeting, such as calling them or rescheduling the meeting.

Does the student have a disability under Section 504?

- The team must determine if the student has a physical or mental impairment which substantially limits one or more major life activities.



What is an impairment?

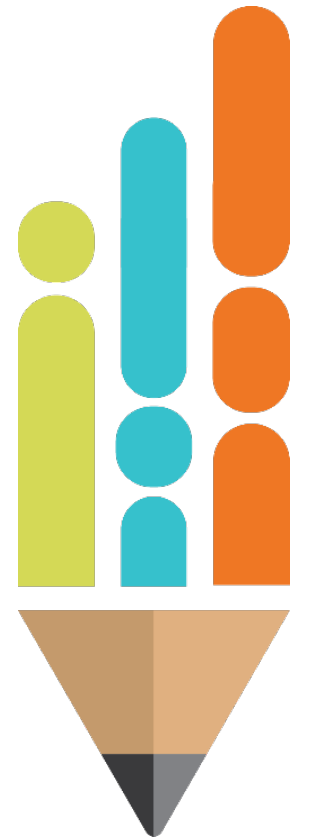
- Any physiological condition that affects a bodily system, or any mental or psychological disorder.

34 C.F.R. § 104.3(j)(2)(i)



Physical or Mental Impairment

The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.



Major Life Activities

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating

34 C.F.R. § 104.3(j)(2)(ii)



Substantial Limitations

- Determined on a case-by-case basis by information obtained from a variety of sources within the evaluation.
- Does not mean severe restriction or inability to perform major life activity.
- Important life activities are restricted as to the condition, manner, duration under which they can be performed in comparison to most people.

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>



You be the Judge!

- Shannon's seventh grade teachers report that she often falls asleep, without warning, during class and misses instruction.
- Her parents insist that she gets a good night sleep but note that their pediatrician told them Shannon might have narcolepsy, a chronic brain disorder that involves poor control of sleep and wake patterns.
- What should the teachers do?




What can go into a 504 plan?



Accommodations

- Extended Time
- Preferential Seating
- Leave Class Early
- Picture Schedule
- Read Aloud



Modifications

- Delete extraneous information
- Decrease amount of information presented
- Alternate Formats to Demonstrate Learning



Related Services

- Transportation
- Speech/Language
- Occupational Therapy
- Nursing Services
- Counseling
- Physical Therapy
- Aide

These are not exhaustive lists!



Is a medical diagnosis required to qualify for Section 504?

- No! Records of a student's medical diagnosis may be considered along with other data when determining whether students qualify for services but are not required. Eligibility should be determined on a case-by-case basis.



Does having a medical diagnosis automatically qualify for 504?

- No! A medical diagnosis does not automatically qualify a student for services. It should be considered along with other sources when evaluating. However, a medical diagnosis may trigger an evaluation as it may give the district a reason to suspect the student has a disability.



Mitigating Measures

- As of Jan. 1, 2009:
- School districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must not consider the ameliorating effects of any mitigating measures that student is using.



Mitigating Measures

- Mitigating measures include*:
 - medication;
 - medical supplies,
 - equipment or appliances;
 - low-vision devices (which do not include ordinary eyeglasses or contact lenses);
 - prosthetics (including limbs and devices);
 - hearing aids and cochlear implants or other implantable hearing devices;
 - mobility devices;
 - oxygen therapy equipment and supplies;
 - use of assistive technology;
 - reasonable accommodations or auxiliary aids or services; and
 - learned behavioral or adaptive neurological modifications.



Transitory Impairment

- An individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.
- It is resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>

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Other Considerations

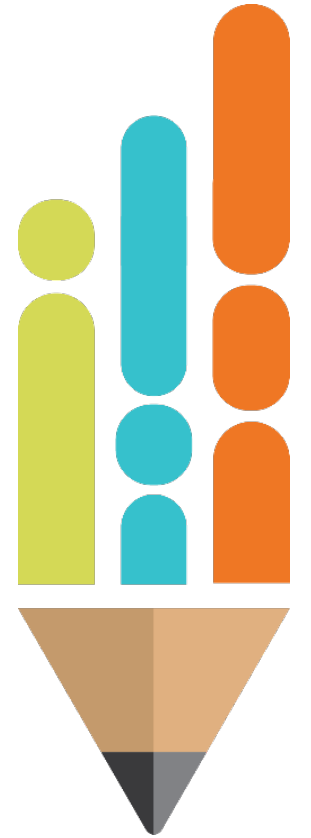
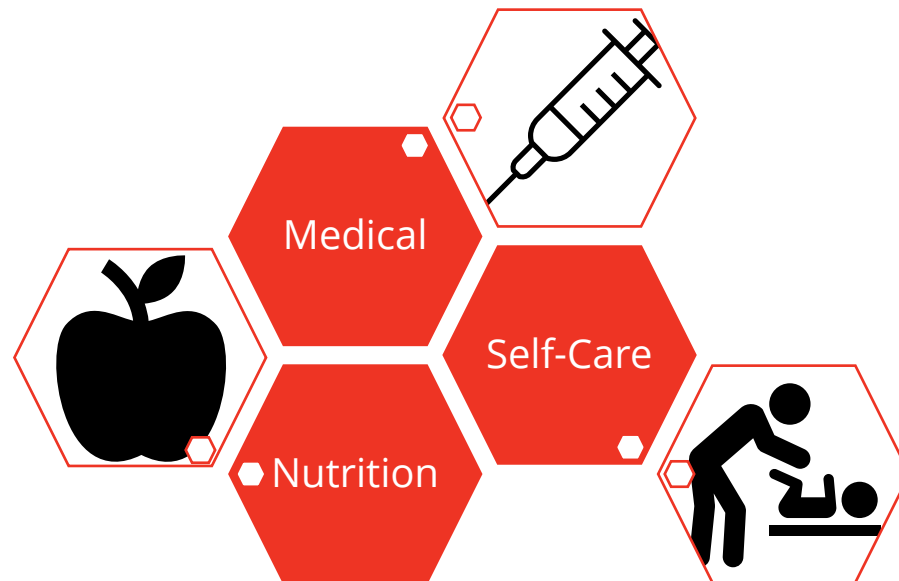
Reevaluations

- Re-evaluations must be conducted:
 - Periodically
 - Before a significant change in placement

34 C.F.R. § 104.36

Health-Related Services

- Generally, Section 504 obligates districts to provide students with disabilities those health-related services that are required to be performed during the school day to allow school attendance.



Advanced Math & Science Academy., 65 IDELR 82 (OCR 2014)

Special Diets

- If food is provided to all students, it must be provided to students with disabilities who have special dietary needs on the same basis that food is provided to non-disabled students.
- Districts must allow snacks for students with diabetes, but districts are not required to provide the snacks, unless snacks are provided to all students.



Holt (MR) Pub. Schs., 122 LRP 9446 (OCR 2022)

Individual Health Plans

- Health plans should not serve as substitutes for Section 504 plans.
- Services provided in health plans are usually mitigating measures and cannot be considered in determining eligibility.
- Districts/schools with a practice of placing students on health plans absent evaluations for Section 504 eligibility should re-visit their practice.



Attendance

- Students receiving special education services or provided protection under Section 504 may need modified schedules.
 - These students may attend part-time days, alternating days, or for a specific amount of time as indicated in their IEP or 504 plan.
- Shortening a student's day may only be done if the student continues to receive a free and appropriate public education (FAPE), and the student needs a shortened day to meet his or her individual need for an appropriate education.



Homebound

The student's IEP/504 shall also be reviewed by the IEP/504 team every thirty (30) school days to ensure the continued appropriateness of instruction and of the homebound placement.



You be the Judge!

- Maya has a 504 plan due to her inability to concentrate as a result of her ADHD.
- Her 504 plan provides extended time and a classroom aide to keep her on task.
- Mid-way through the school year, Maya's dad begins to notice a drop in her reading grades and informs her 504 team. Maya is working hard to remain on-task during her reading class, but she is still struggling to complete assignments in the amount of time provided. Dad requests that she be evaluated for an IEP.
- How may the school respond?



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Discipline

Manifestation Determination

- Districts **must** "conduct an evaluation . . . of any person who . . . needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person . . . and any subsequent significant change in placement."

34 C.F.R. § 104.35(a)



Who serves on 504 MDR team?

- The MDR team **must** include:
 - (1) people knowledgeable about the student,
 - (2) the meaning of the evaluation data, and
 - (3) the placement options.
- This may be the same group that makes placement decisions.

OCR Staff Memorandum, 16 IDELR 491 (OCR 1989). See 34 C.F.R. § 104.35 (c)



MDR Purpose

- MDRs are conducted to determine whether the student's misconduct was caused by or related to his physical or mental impairment.

Dunkin (MO) R-V Sch. Dist., 52 IDELR 138 (OCR 2009)



You be the Judge!

- Keaton is a fifth grader. He has a disability and a Section 504 Plan. During the semester, Keaton received two 5-day suspensions for fighting at school. Keaton's behavior improved during the second nine weeks. He has been doing very well until an incident occurs and he gets suspended for 12 school days.
- What are the schools' responsibilities regarding Keaton and his 504 plan?





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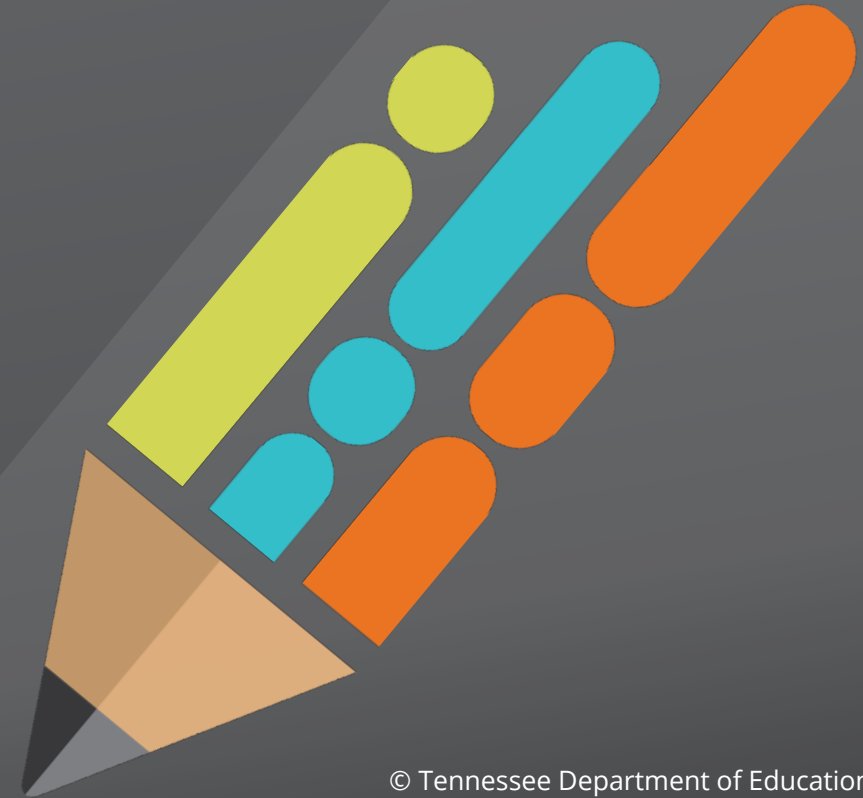
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https://stateoftennessee.formstack.com/forms/2024_federal_programs_institute_presentation_survey



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